

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Civil No.:19-cv-11806

Plaintiff,

-v-

Jennette Caraballo
32 Black Hawk Road
Pine Bush, NY 12566

Chase Bank USA, NA
200 White Clay Center Drive
Newark, DE 19711

GE Money Bank
170 Election Road
Ste 125
Draper, Utah 84020

John Doe, Mary Roe, and XYZ Corporation
32 Black Hawk Road
Pine Bush, NY 12566

Defendants.

Application granted. The Clerk of Court is respectfully directed to amend the caption to substitute Mary Caraballo for Mary Roe, and to terminate John Doe and XYZ Corporation as defendants.

SO ORDERED.


CATHY SEIBEL, U.S.D.J.

12/20/21

**NOTICE OF MOTION AND MOTION
FOR AMENDMENT OF THE CAPTION**

PLEASE TAKE NOTICE that the United States of America, by Pincus Law Group, PLLC, will move and does hereby move this Honorable Court, located at the U.S. Courthouse, 100 State Street, Rochester, NY 14614, on a date to be determined by the Court, or as soon thereafter as counsel can be heard for an Order pursuant to Fed. R. Civ. P. 15 amending the caption of this action by substituting Mary Caraballo into the caption in the place and stead of defendant Mary Roe, dismissing the defendants John Doe and XYZ Corporation and for such other and further relief as the Court may deem just and proper.

In support of the present Motion, the United States relies upon the attached Affirmation of Barry M. Weiss and the exhibits described therein.

The plaintiff intends to file Reply papers to any Opposition papers filed with respect to this motion.

Dated: Uniondale, New York
December 20, 2021

/s/Barry M. Weiss

Barry M. Weiss
Pincus Law Group, PLLC
425 RXR Plaza
Uniondale, NY 11556
(516)699-8902

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Civil No.:19-cv-11806

Plaintiff,

-v-

Jennette Caraballo
32 Black Hawk Road
Pine Bush, NY 12566

Chase Bank USA, NA
200 White Clay Center Drive
Newark, DE 19711

GE Money Bank
170 Election Road
Ste 125
Draper, Utah 84020

John Doe, Mary Roe, and XYZ Corporation
32 Black Hawk Road
Pine Bush, NY 12566

Defendants.

ATTORNEY AFFIRMATION

Barry M. Weiss, hereby states that he is an attorney duly admitted to practice in the Southern District of the State of New York, and hereby affirms under penalty of perjury as follows:

1. I am associated with Pincus Law Group, PLLC, the attorneys of record for the plaintiff, United States of America, by and through its agency, USDA Rural Housing Service (hereinafter also referred to as “the plaintiff”), and I am familiar with the facts and circumstances, pleadings and proceedings herein. This affirmation is submitted in support of the plaintiff’s motion for an Order pursuant to Fed. R. Civ. P. 15 amending the caption of this action by substituting

Mary Caraballo into the caption in the place and stead of defendant Mary Roe, dismissing the defendants John Doe and XYZ Corporation and for such other and further relief as the Court may deem just and proper.

2. This is an action for foreclosure of a mortgage on the premises known as 32 Black Hawk Road, Pine Bush, NY 12566.

3. This action was commenced on December 26, 2019, by the filing of the original complaint in the Office of the Clerk of this Court. (Doc #1).

4. As appears by the Affidavits of Service on file in the office of the Clerk of this Court (Doc #37), the defendants named in the Complaint, except John Doe and XYZ Corporation were duly served with the Summons and Complaint. (**Exhibit A.**)

5. Each of these defendants are in default for want of appearance, defense or answer, although the time for each of these defendants to appear, answer or otherwise defend in this action has expired.

6. In addition to these defendants, an individual who upon information and belief is an occupant of the premises was served with the summons and complaint, to wit, Mary Caraballo, who as an occupant of the subject premises and consequently may have an interest in the subject premises and thus is a necessary party to this action pursuant to RPAPL § 1311. RPAPL § 1311 provides that “each of the following persons, whose interest is claimed to be subject and subordinate to the plaintiff’s lien, shall be made a party defendant to the action: 1. Every person having an estate or interest in possession, or otherwise, in the property as tenant in fee, for life, by the curtesy, or for years, and 3. Every person having any lien or incumbrance upon the real property which is claimed to be subject and subordinate to the lien of the plaintiff.” A copy of the affidavit of service upon Mary Caraballo is attached hereto as **Exhibit B**. It is therefore requested that the

caption of the action be amended by substituting Mary Caraballo into the caption in the place and stead of defendant Mary Doe, and following such substitution, that the Clerk of the Court amend the docket and electronic docket of the Court accordingly, all without prejudice to the proceedings heretofore had herein.

7. It was found that there is no John Doe and no XYZ Corporation occupying the premises. The plaintiff therefore further requests that the caption of the action be amended by excising the defendants John Doe and XYZ Corporation, and that this action be discontinued against the defendants John Doe and XYZ Corporation, all without prejudice to the proceedings heretofore had herein, and that the caption be amended accordingly. Copies of the Affidavits of Attempted Service upon John Doe and XYZ Corporation are annexed hereto as **Exhibit C**.

WHEREFORE, it is requested that an order be made pursuant to Fed. R. Civ. P. 15 amending the caption of this action by substituting Mary Caraballo into the caption in the place and stead of defendant Mary Roe, dismissing the defendants John Doe and XYZ Corporation and for such other and further relief as the Court may deem just and proper.

Dated: Uniondale, New York
December 20, 2021

/s/Barry M. Weiss

Barry M. Weiss
Pincus Law Group, PLLC
425 RXR Plaza
Uniondale, NY 11556
(516)699-8902

EXHIBIT A

Client Ref.: JENNETTE CARABALLO / PV 6212362

AFFIDAVIT OF SERVICEUNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORKCase Number: 7:19-cv-11806-CS
Filed On: 12/30/2019

UNITED STATES OF AMERICA

Plaintiff(s),

vs.

JENNETTE CARABALLO, ET AL

Defendant(s).

State of New York: County of Rockland ss: Theodore M. Odell, being duly sworn deposes and says deponent is not a party to this action and is over the age of eighteen years and resides in the State of New York.

That on 10/9/2021 at 1:02 PM at 32 BLACK HAWK ROAD, PINE BUSH, NY 12566, deponent served the within **SUMMONS IN A CIVIL ACTION, COMPLAINT - ACTION TO FORECLOSE A MORTGAGE** which contains the additional notice requirements in accordance with RPAPL 1320, along with a copy of the Homeowner's Foreclosure Notice as required by RPAPL 1303, which Notice was printed on a colored piece of paper, which color differed from that of the color of the **SUMMONS IN A CIVIL ACTION, COMPLAINT - ACTION TO FORECLOSE A MORTGAGE** and the notice was in bold, fourteen-point type, with the title of the Notice in bold, twenty-point type, bearing index # 7:19-cv-11806-CS, filed 12/30/2019 On JENNETTE CARABALLO, defendant therein named.

SUITABLE AGE PERSON: By delivering a true copy of each to J.C. (minor), the Son/Co-resident of JENNETTE CARABALLO, a person of suitable age and discretion. Said premises is intended recipient's residence within the state.

DESCRIPTION: Deponent further states that the description of the person actually served is as follows:

Gender: Male Race/Skin: Brown Age: 15-17 Weight: 131-160 Lbs. Height: 5' 9" - 6' 0" Hair: Black Glasses: No Other:

Deponent also enclosed a copy of same in a postpaid sealed wrapper properly addressed to the above intended recipient at 32 BLACK HAWK ROAD, PINE BUSH, NY 12566 and deposited said wrapper in an official depository under exclusive care and custody of the United States Postal Service on 10/12/2021. The envelope was marked "Personal and Confidential".

COMMENTS:

MILITARY STATUS: I asked the person spoken to if the defendant/recipient was in active military service of the United States or the State of New York in any capacity or if they are financially dependent on anyone in the military and received a negative reply. The source of my information and the grounds of my belief are the conversations and observations above narrated. Upon information and belief I aver that the defendant/recipient is not in the military and is not financially dependent on someone in active military service of the United States or the State of New York as that term is defined in the statutes of New York State or the Federal Soldiers and Sailors Civil Relief Act.

SWORN TO BEFORE ME ON

10/12/2021

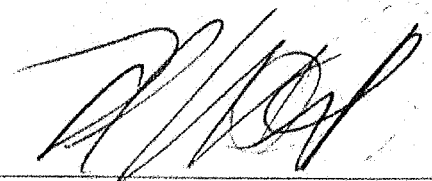

DANIELLE S. CIRALDO
NOTARY PUBLIC OF NEW YORK

NO. 01C16153192

QUALIFIED IN ROCKLAND

MY COMMISSION EXPIRES 9/25/2022

X



Theodore M. Odell

10/12/2021

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* JENNETTE CARABALLO
 was received by me on *(date)* 10/01/2021

☐ I personally served the summons on the individual at *(place)* _____

on *(date)* _____ ; or

☒ I left the summons at the individual's residence or usual place of abode with *(name)* J.C. (MINOR)
 SON/CO-RESIDENT _____, a person of suitable age and discretion who resides there,
 on *(date)* 10/09/2021, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____

on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00

I declare under penalty of perjury that this information is true.

Date:

11/1/21



 Server's signature

THEODORE M. ODELL (PROCESS SERVER)

 Printed name and title

261 Mountainview Ave. St. 2, Nyack NY

 Server's address

10960

Additional information regarding attempted service, etc:



PROVEST LLC
320 CARLETON AVE, STE.2600
CENTRAL ISLIP, NY, 11722
(631) 666-6168

PINCUS LAW GROUP, PLLC
425 RXR PLAZA
UNIONDALE, NY 11556

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

INDEX # 19-CV-11806

UNITED STATES OF AMERICA,

Plaintiff,

Against

JENNETTE CARABALLO, ET AL

Defendants,

AFFIDAVIT OF SERVICE

I, JOSEPH DONOVAN, being first duly sworn, depose and say as follows:

I am not a party to this action, I am over 18 years of age and I reside in the State of New York.

On 01/15/2020 at 10:51 AM at 28 LIBERTY STREET, 42ND FLOOR NEW YORK, New York 10005, I served the within SUMMONS IN A CIVIL ACTION & COMPLAINT-Action to Foreclose A MORTGAGE bearing index # 19-cv-11806, filed 12/30/2019 on Chase Bank USA NA, defendant therein named,

(X) CORPORATION: A corporation, by personally delivering thereat a true copy of each to JIANCARLOS DEGRACIA, PROCESS SPECIALIST, authorized agent of CT CORPORATION SYSTEM, registered agent for CHASE BANK USA NA.

DESCRIPTION

The following is a description of the individual I served to the best of my ability at the time and circumstances of service:

AGE: 30 SKIN TONE: BROWN GENDER: MALE WEIGHT: 131-160 LBS HEIGHT: 5FT4IN-5FT7IN HAIR: BLACK

LICENSE # Y292936

FILE # Jennette Caraballo

CASE ID # 5738102

STATE OF NEW YORK

COUNTY OF Richmond

Sworn to and subscribed before me this 3 day of March, 2020, by JOSEPH DONOVAN (affiant name).


Signature of Notary Public

Print, Type or Stamp Notary's Commissioned Name

Personally known X OR Produced Identification _____

Type of Identification Produced _____

TARA DONOVAN
NOTARY PUBLIC-STATE OF NEW YORK
No. 01DO6210234
Qualified in Richmond County
My Commission Expires 08-10-2021

CTCO919

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 19-cv-11806

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* Chase Bank USA NA
 was received by me on *(date)* 1/13/20

☐ I personally served the summons on the individual at *(place)*

on *(date)* ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)*

, a person of suitable age and discretion who resides there,
 on *(date)* , and mailed a copy to the individual's last known address; or

☒ I served the summons on *(name of individual)* JIANCARLOS DEGRACIA , who is
 designated by law to accept service of process on behalf of *(name of organization)* CHASE BANK USA NA
 at 28 LIBERTY STREET, 42ND FLOOR NEW YORK, NY 10005 on *(date)* 1/15/20 ; or

☐ I returned the summons unexecuted because ; or

☐ Other *(specify)*:

My fees are \$ for travel and \$ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: November 8, 2021



Server's signature

Joseph Donovan - process server

Printed name and title

5 Edgar Terrace #2, Staten Island, NY 10301

Server's address

Additional information regarding attempted service, etc:

Print

Save As...

Reset



PROVEST LLC
320 CARLETON AVE, STE.2600
CENTRAL ISLIP, NY, 11722
(631) 666-6168

PINCUS LAW GROUP, PLLC (NY)
425 RXR PLAZA
New York, New York 11556

UNITED STATES DISTRICT COURT COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

INDEX # 19-CV-11806

UNITED STATES OF AMERICA,

Plaintiff,

Against

JENNETTE CARABALLO,

Defendants.

AFFIDAVIT

Gavin Rees being duly sworn, deposes and says: that deponent is not a party to this action, is over 18 years of age and resides in the State of Utah.

That on December 10, 2021 at 10:26 am, I (X) served () nonserved the Defendant at 170 WEST ELECTION RD SUITE 125, DRAPER, UT, 84020 the within bearing index #19-cv-11806, filed 12/30/2019 on GE Money Bank, defendant therein named,

CORPORATION A corporation, by delivering thereat a true copy of each to, William Prince, managing agent, personally; deponent knew said so served to be the corporation described as the named defendant and knew said individual to be the AUTHORIZED AGENT thereof.

X

DESCRIPTION Deponent describes the individual served to the best of deponent's ability at the time and circumstances of service as follow:

Sex	Skin Color	Hair Color	Age(Aprx)	Height (Aprx)	Weight (Aprx)
male	white	brown	60	5'9"	150

NON-SERVE /
COMMENTS



Gavin Rees
SERVER SIGNATURE
LICENSE # R111881
FILE # Jennette Caraballo
CASE ID # 6264471

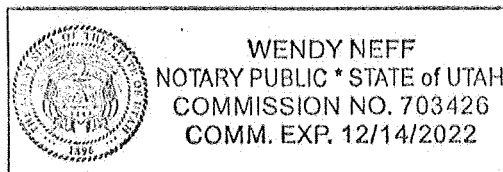
STATE OF Utah
COUNTY OF Salt Lake

Sworn to and subscribed before me this 14 day of December, 2021, by Gavin Rees (affiant name).

Signature of Notary Public

Wendy Neff
Print, Type or Stamp Notary's Commissioned Name

Personally known X OR Produced Identification _____
Type of Identification Produced _____



AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 19-cv-11806

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* GE Money Bank
 was received by me on *(date)* 12/3/21

☐ I personally served the summons on the individual at *(place)*

on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)*

_____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☒ I served the summons on *(name of individual)* William Prince (managing agent), who is
 designated by law to accept service of process on behalf of *(name of organization)*

GE Money Bank on *(date)* 12/10/21 ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: 12/14/21



Server's signature

Gavin Rees (process server)

Printed name and title

285 W Tabernacle Street Suite 201
 St George, UT 84770

Server's address

Additional information regarding attempted service, etc:

Print

Save As...

Reset

EXHIBIT B

Client Ref.: JENNETTE CARABALLO / PV 6154808

AFFIDAVIT OF SERVICEUNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

Plaintiff(s),

Case Number: 7:19-cv-11806-CS

Filed On: 12/30/2019

vs.

JENNETTE CARABALLO, ET AL

Defendant(s).

State of New York: County of Rockland ss: Theodore M. Odell, being duly sworn deposes and says deponent is not a party to this action and is over the age of eighteen years and resides in the State of New York.

That on 8/12/2021 at 5:59 PM at 32 BLACK HAWK ROAD, PINE BUSH, NY 12566, deponent served the within SUMMONS IN A CIVIL ACTION, COMPLAINT - ACTION TO FORECLOSE A MORTGAGE On MARY CARABALLO AS MARY ROE #1

SUITABLE AGE PERSON: By delivering a true copy of each to CAMERON LEATH, the Son of MARY CARABALLO AS MARY ROE #1, a person of suitable age and discretion. Said premises is intended recipient's residence within the state.

Deponent also enclosed a copy of same in a postpaid sealed wrapper properly addressed to the above intended recipient at 32 BLACK HAWK ROAD, PINE BUSH, NY 12566 and deposited said wrapper in an official depository under exclusive care and custody of the United States Postal Service on 08/16/2021. The envelope was marked "Personal and Confidential".

DESCRIPTION: Deponent further states that the description of the person actually served is as follows:

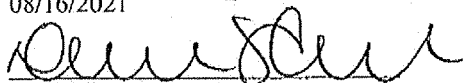
Gender: Male Race/Skin: Dk. Brown Age: 25-35 Weight: 131-160 Lbs. Height: 5' 9" - 6' 0" Hair: Black Glasses: No Other: Facial Hair

COMMENTS:

MILITARY STATUS: I asked the person spoken to if the defendant/recipient was in active military service of the United States or the State of New York in any capacity or if they are financially dependent on anyone in the military and received a negative reply. The source of my information and the grounds of my belief are the conversations and observations above narrated. Upon information and belief I aver that the defendant/recipient is not in the military and is not financially dependent on someone in active military service of the United States or the State of New York as that term is defined in the statutes of New York State or the Federal Soldiers and Sailors Civil Relief Act.

SWORN TO BEFORE ME ON

08/16/2021



DANIELLE S. CIRALDO

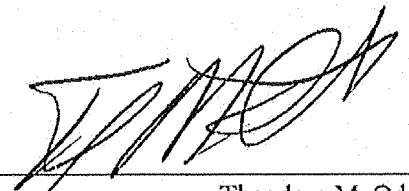
NOTARY PUBLIC OF NEW YORK

NO. 01C16153192

QUALIFIED IN ROCKLAND

MY COMMISSION EXPIRES 9/25/2022

X



Theodore M. Odell

08/16/2021

EXHIBIT C

Client Ref.: JENNETTE CARABALLO / PV 6154808

AFFIDAVIT OF ATTEMPTED SERVICE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

Plaintiff(s),

Case Number: 7:19-cv-11806-CS

Filed On: 12/30/2019

vs.

JENNETTE CARABALLO, ET AL

Defendant(s).

State of New York: County of Rockland ss: Theodore M. Odell, being duly sworn, deposes and says: that deponent is not a party to this action, is over 18 years of age and resides in the State of New York.

That on 8/12/2021 at 5:59 PM at 32 BLACK HAWK ROAD, PINE BUSH, NY 12566

Deponent attempted to serve the within SUMMONS IN A CIVIL ACTION, COMPLAINT - ACTION TO FORECLOSE A MORTGAGE

On JOHN DOE

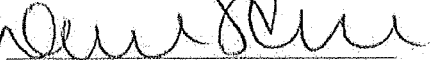
That diligent effort was made by deponent to serve the within document(s) on the defendant(s)/respondent(s) therein named without success for the reasons indicated below:

SERVICE WAS UNABLE TO BE EFFECTUATED BECAUSE THERE ARE NO JOHN DOES RESIDING AT THE ABOVE LISTED ADDRESS. THIS INFORMATION WAS PROVIDED BY CAMERON LEATH.


DESCRIPTION: MALE, DK. BROWN SKIN, BLACK HAIR, 25-35 Y/O, 5'9"-6', 131-160 LBS., FACIAL HAIR.

SWORN TO BEFORE ME ON

8/16/2021



DANIELLE S. CIRALDO
NOTARY PUBLIC OF NEW YORK
NO. 01C16153192
QUALIFIED IN ROCKLAND
MY COMMISSION EXPIRES 9/25/2022

X 
Theodore M. Odell
8/16/2021

Client Ref.: JENNETTE CARABALLO / PV 6154808

AFFIDAVIT OF ATTEMPTED SERVICE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

Plaintiff(s),

Case Number: 7:19-cv-11806-CS

Filed On: 12/30/2019

vs.

JENNETTE CARABALLO, ET AL

Defendant(s).

State of New York: County of Rockland ss: Theodore M. Odell, being duly sworn, deposes and says: that deponent is not a party to this action, is over 18 years of age and resides in the State of New York.

That on 8/12/2021 at 5:59 PM at 32 BLACK HAWK ROAD, PINE BUSH, NY 12566

Deponent attempted to serve the within SUMMONS IN A CIVIL ACTION, COMPLAINT - ACTION TO FORECLOSE A MORTGAGE

On XYZ CORPORATION

That diligent effort was made by deponent to serve the within document(s) on the defendant(s)/respondent(s) therein named without success for the reasons indicated below:

SERVICE WAS UNABLE TO BE EFFECTUATED BECAUSE THERE ARE NO XYZ CORPORATIONS LOCATED AT THE ABOVE LISTED ADDRESS. THIS INFORMATION WAS PROVIDED BY CAMERON LEATH.

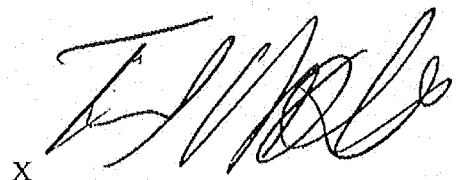
DESCRIPTION: MALE, DK. BROWN SKIN, BLACK HAIR, 25-35 Y/O, 5'9"-6', 131-160 LBS., FACIAL HAIR.

SWORN TO BEFORE ME ON

8/16/2021



DANIELLE S. CIRALDO
NOTARY PUBLIC OF NEW YORK
NO. 01CI6153192
QUALIFIED IN ROCKLAND
MY COMMISSION EXPIRES 9/25/2022



Theodore M. Odell
8/16/2021